Office-Supreme Court, U.S.
FILED
FEB 18 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM

No. 842

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC, GULF, LAKES & INLAND WATER DISTRICT, PUERTO RICO DIVISION, AFL-CIO,

Petitioner,

vs.

VALENCIA BAXT EXPRESS, INC., MARITIME TRUCKING COMPANY, INC., and LABOR RELATIONS BOARD OF PUERTO RICO,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

RICHARD P. LONG,
64 Wall Street,
New York, New York.

SARAH TORRES PERALTA,
GINORIS VIZCARRA,
720 First Federal Building,
Santurce, Puerto Rico,

Counsels for Petitioner.

INDEX

	PAGE
OPINION BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTE INVOLVED	2
STATEMENT	3
A. Proceedings Before the Supreme Court of the Commonwealth of Puerto Rico, Case Number 62-2	4
B. Proceedings Before the United States District Court for the District of Puerto Rico	4
C. Continuation of Proceedings Before the Supreme Court of the Commonwealth of Puerto Rico	5
REASONS FOR GRANTING THE WRIT	7
CONCLUSION	11

Citations

	PAGE
Boston Printing Pressmen v. Potter Press, 141 F. Supp. 553 (1956), *aff'd* in 247 F. 2d 787 (1957); *cert. denied*, 355 U. S. 817 (1957)	5, 6, 7, 8, 9
Charles Dowd Box v. Courtney, 368 U. S. 502 (1962)	5, 10
Division 892 v. M. K. O. Transit Lines, 210 F. Supp. 351 (1962)	9
Valencia Baxt Express, Inc., In re, 199 F. Supp. 103 (1962)	5
Mine Workers v. Eagle Picher Co., 325 U. S. 335 (1945)	1
Retail Clerks Local 128 v. Lion Dry Goods, Inc., 369 U. S. 17 (1962)	7, 8, 9, 11
Textile Workers Union of America v. Lincoln Mills of Alabama, 353 U. S. 448 (1957)	9, 10
United Steel Workers of America v. Warrior & Gulf Navigation Company, 363 U. S. 574 (1960)	6

Statutes

28 U. S. C. Section 1258	2
29 U. S. C. Section 185	2, 5, 7, 8, 9, 10, 11
Rules 19, 21, 22 and 23 of the Supreme Court Rules	2
29 L. P. R. A. Section 70	4, 5, 10

IN THE

Supreme Court of the United States

OCTOBER TERM

No. .....

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC, GULF, LAKES AND INLAND WATER DISTRICT, PUERTO RICO DIVISION,

Petitioner,

vs.

VALENCIA BANT EXPRESS COMPANY, INC., MARITIME TRUCKING COMPANY, INC. and the LABOR RELATIONS BOARD OF PUERTO RICO,[1]

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the Commonwealth of Puerto Rico, entered in the above-entitled case on October 25, 1962.

---

[1] In the proceeding before the Supreme Court of the Commonwealth of Puerto Rico, Case Number JRT 62-2, the Labor Relations Board of Puerto Rico appeared as petitioner, in the name of and in representation of the herein petitioner. The Union was Intervenor in said proceeding. In accordance with the case of *Mine Workers* v. *Eagle Picher Co.*, 325 U. S. 335 (1945), the Union is the petitioner in the instant writ and the Labor Board and the respondent companies, the respondents herein.

Opinion Below

The judgment of the Supreme Court of the Commonwealth of Puerto Rico was made and entered on October 25, 1962, is unreported and is printed in Appendix A hereto, page 2a *et seq.*

Jurisdiction

The judgment of the Supreme Court of the Commonwealth of Puerto Rico was entered on October 25, 1962 (Appendix A, p. 1a). A timely petition for rehearing was filed on November 6, 1962 (Appendix B, pp. 68-82)[2] and denied on November 20, 1962 (Appendix B, p. 83). The jurisdiction of this Honorable Court is invoked under 28 U. S. C. §1258(3) and this writ is brought in accordance with Rules 19, 21, 22 and 23 of this Honorable Court.

Questions Presented

1. Is an arbitration award of a quasi legislative nature, issued under the authority of a strike settlement agreement, enforceable under Section 301 of the Labor Management Relations Act, 29 U. S. C. Section 185(a)?

2. Is the field of enforcement of quasi legislative labor arbitration awards preempted by Section 301 of the Labor Management Relations Act, 29 U. S. C. Section 185(a)?

Statute Involved

The statutory provision involved in the instant Writ of Certiorari is Section 301 of the Labor Management Relations Act, 29 U. S. C. § 185(a).

---

[2] Appendix B is the certified translation of the documents filed in Case No. JRT 62-2, before the Supreme Court of the Commonwealth of Puerto Rico.

Statement

This case involves the enforcement of a valid arbitration award rendered pursuant to a settlement agreement entered into by the herein petitioner and the respondent companies, with the purpose of bringing to an end a strike at the business concerns of the respondent companies.

The facts of this case are as follows: A strike at the respondents companies[3] came to an end on March 17, 1961 when petitioner herein, the certified representative of the employees involved, and the respondent companies, signed a settlement agreement entitled "Memorandum of Settlement".[4] Said settlement agreement provided among other things for the commencement of negotiations a week afterwards, and "* * * If agreement can not be reached within 15 days * * *" then "the entire matter shall be submitted to arbitration" (Appendix A, p. 2a). In compliance with said agreement the employees returned to work and negotiations commenced. Negotiations failed and pursuant to said settlement agreement, petitioner herein requested the appointment of an arbitrator. An arbitrator was duly appointed by the Secretary of Labor of the Commonwealth of

[3] There is no doubt that such a strike took place. However, the court below expresses that "the record does not say what were the specific demands or disputes object of the stoppage." The court below accordingly interprets that the phrase "the entire matter" must be the "state of strike" (Appendix A, p. 9a). From the record before the court below it appears that the cause of the strike was an *impasse* in the negotiations of a new contract. See Appendix B, p. 31. Furthermore, it is clear that the strike came to an end upon the signing of the settlement agreement, therefore the phrase "the entire matter" could not possibly refer, as the court below interprets it, to the strike, which in any event by that time no longer continued. This, and other objections which petitioner herein has to the judgment of the court below, appear from the Motion for Reconsideration filed (Appendix B, pp. 68-82). Note that the case was decided upon a Motion to Dismiss, without the court having given the Board opportunity to remit the whole record of the arbitration proceedings.

Puetro Rico (Appendix A, p. 2a). Hearings were conducted by the arbitrator and on August 10, 1961, he rendered the award object of this proceeding (Appendix B, pp. 9-34). The respondent companies have refused to gomply with the award, notwithstanding the requests made by petitioner herein and by the Board (Appendix B, p. 4).

A. Proceedings Before the Supreme Court of the Commonwealth of Puerto Rico, Case Number 62-2

On January 31, 1962, the Labor Relations Board of Puerto Rico, hereinafter referred to as the Board, filed before the Supreme Court of the Commonwealth of Puerto Rico (herein referred to as the court below) a petition for enforcement of an award rendered by a duly appointed arbitrator pursuant to a "Memorandum of Settlement" signed by petitioner herein and the respondent companies on March 17, 1961. Said petition for enforcement of the award was filed by the Board in the name of and in representation of the petitioner herein under the provisions of the Labor Relations Law of Puerto Rico, 29 L. P. R. A. Section 70(2)(e). On February 7, 1962, petitioner herein filed a motion for leave to intervene. On February 14, 1962, the court below issued an order requesting that the respondent companies show cause why the arbitration award should not be enforced (Appendix A, p. 7a).

B. Proceedings Before the United States District Court for the District of Puerto Rico [4]

On February 20, 1962, the respondent companies filed a petition for removal before the said Federal District Court (Appendix A, p. 7a). Petitioner herein filed a motion for leave to intervene (Appendix C, pp. 8-9) and intervention was granted as per order of the court of March 28, 1962 (Appendix C, p. 22). The petition for removal was denied by order of the court of May 3, 1962 (Appendix C, p. 28).

[4] Appendix C hereto, is a certified copy of the proceedings before the United States District Court for the District of Puerto Rico.

The court in its "Memorandum of Law" of the same date held itself without jurisdiction to entertain the petition for removal on the basis of its prior holding in *In re Valencia Baxt Express, Inc.*, 199 F. Supp. 103 (1962), and under the authority of *Boston Printing Pressmen* v. *Potter Press*, 141 F. Supp. 553 (1956), *aff'd* in 247 F. 2d 787 (1957); *cert. denied*, 355 U. S. 817 (1957). Rehearing was filed by the respondent companies and denied on July 10, 1962 (Appendix C, p. 32).

C. Continuation of Proceedings Before the Supreme Court of the Commonwealth of Puerto Rico

Once the case was remanded by the federal district court to the Supreme Court of the Commonwealth of Puerto Rico, on May 9, 1962 petitioner herein filed a Motion before the court below to inform the court that the case had been remanded and thus the court had jurisdiction to proceed. Petitioner herein again requested leave to intervene (Appendix B, pp. 38-39). The Board expressed no objection to said intervention (Appendix A, p. 7a). The respondent companies then filed a Motion to Dismiss (Appendix A, p. 7a) alleging that on the basis of the *Boston Printing Pressmen* case, *supra*, the applicable federal rule was to the effect that the courts could not enforce quasi-legislative awards and that such being the federal substantive law, the court below was bound to adhere to it. Both the Union and the Board filed their opposition to said Motion to Dismiss, alleging, in synthesis, that the doctrine established by this Court in *Charles Dowd Box* v. *Courtney*, 368 U. S. 502 (1962), was to the effect that Section 301 of the Labor Management Relations Act, did not deprive state courts of jurisdiction in suits in violation of agreements; that the jurisdiction of the federal courts was supplementary to the traditional jurisdiction of state courts; that section 9(2)(c) of the Labor Relations Act of Puerto Rico, 29 *L. P. R. A. Section* 70, under which the instant proceeding was begun in no way precluded the enforcement of this award and on the contrary, the specific

Section of the local law was the clear legislative expression referred to in the opinion rendered by the federal district court in the *Boston Printing* case, *supra*, at p. 557. Consequently that this field not having been preempted, the court below could order the enforcement of this award.

The court below rendered judgment in the above entitled case and held that the award was to be "enforced as to that part which declared (1) that the collective agreement between the Union and the Employers expired on November 30, 1960; (2) That the Union timely notified the employers of their desire to enter into negotiations and that this notice precluded the automatic renewal on December 1, 1960 of the existing agreements. *Applying to these employers the federal law,* coupled with the serious doubts stirred as to whether the submission clause authorized or not the arbitrator to draw up himself, binding on both parties, all the clauses of a new collective agreement, the Court will not enforce that part of the award that consists in said new collective agreement." (Appendix A, p. 45a).[5] (Emphasis supplied.)

A Motion for Reconsideration was filed by petitioner herein requesting that the court reconsider and clarify its judgment, and was denied on November 20, 1962 (Appendix A, p. 170).

---

[5] In other words, the court below did not enforce any provisions of the award. Sentences numbered (1) and (2) in effect constitute conclusions of fact. The remainder of the dispositive part of the opinion and judgment, regarding the doubts it has as to the extent of the "submission" was never raised by the respondent companies, and in any event any doubts regarding this aspect, would have to be decided in favor of the coverage of the submission. *United Steel Workers of America* v. *Warrior and Gulf Navigation Company*, 363 U. S. 574 (1960).

Reasons for Granting the Writ

On March 17, 1961, a strike by members of the Petitioner herein in two transportation companies operating in interstate commerce in San Juan, Puerto Rico, was settled by virtue of a strike settlement agreement. Under the authority of such strike settlement, an arbitration award of a quasi-legislative nature was issued.

The Supreme Court of the Commonwealth of Puerto Rico denied enforcement of the award relying on the decision of the Court of Appeals for the First Circuit in the case of *Boston Printing Pressmen* v. *Potter Press, supra.* Said decision was interpreted by the court below as resolving that as a matter of federal law Section 301 of the Labor Management Relations Act, did not provide any substantive law whereby quasi-legislative arbitration awards may be enforced.

Petitioner herein respectfully submits that, to the extent that the decision in the *Boston Printing case, supra*, may have had the meaning or implications attributed to it by the court below, it has been drastically modified by the decision of this Honorable Court in *Retail Clerks Local 128* v. *Lion Dry Goods, Inc.*, 369 U. S. 17 (1962).

The decision in the *Lions* case, unmistakenly provides for the enforcement of a strike settlement of a quasi legislative nature. In granting such enforcement in said case this Honorable Court used unequivocal language to the effect that:

> We find then from a reading of the words of § 301 (a), both in isolation and in connection with the statute as a whole, no basis for denying jurisdiction of the action based upon the alleged violation of the strike-settlement agreement * * * If this kind of strike settlement were not enforceable under § 301 (a), responsible and stable labor relations would suffer and the attainment of the labor policy objectives of minimizing disruption of interstate commerce would be made

> more difficult. It is no answer that in a particular case the agreement might be enforceable in state courts: a main goal of § 301 was precisely to end "checkboard jurisdiction * * *"

The question herein presented may be considered novel in this sense: while the *Lion's* case goes as far as granting enforcement of a quasi legislative strike settlement, the case at bar involves the enforcement of an arbitration award of a quasi legislative nature, issued under the authority of a valid strike settlement agreement.

It seems only logical that if as a matter of federal substantive law, a strike settlement is enforceable under Section 301, by the same token an arbitration award issued under such strike settlement, which is enforceable by itself, according to the doctrine of the *Lion's* case, should likewise be enforceable under Section 301. To reach a contrary conclusion would almost amount to eliminate the powerful weapon of strike settlements as, probably the most effective means of terminating a strike of an economic nature.

In many instances the parties to a labor strike may be willing to submit voluntarily to compulsory arbitration in order to solve the economic issues involved. If the interpretation of Section 301 in this case prevails, any agreements reached upon would then be unenforceable. This interpretation would result in a never ending source of industrial strife, exactly the contrary of what the policy of the law in this field of labor management relations contemplates.

The holding of the court below in the instant case, to the effect that as a matter of federal law, quasi-legislative arbitration awards are not enforceable, is contrary to the doctrine established by this Court in the *Lion's* case, and it also creates an evil of gigantic proportions which endangers the stability itself of the labor relations field.

The best example of the above stated assertion is the instant case: A certified union calls an economic strike as

a result of an *impasse* in the bargaining process. In good faith, the Union settles the strike on the basis of the aforementioned strike settlement agreement. The Union, in full compliance with its contractual obligations and of its duties as the exclusive representative of the workers, strictly follows the procedure established in the strike settlement agreement subscribed by the respondent companies and by petitioner herein. Such procedure culminates in the arbitration award involved in this case. Are the workers and the Union to be penalized for complying with their contractual obligations? Should a strike settlement agreement entered into for the promotion and preservation of industrial peace be allowed to provide employers with a means to evade legal responsibility toward a certified union and its members?

These question dramatically pose the importance of the issues raised in this proceeding.

In furtherance of a uniform national labor policy in favor of enforcement of a strike settlement agreements, agreements to arbitrate and arbitration awards, as repeatedly asserted by this Honorable Court since the *Lincoln Mills* decision, 353 U. S. 448 (1957) the recent case of *Lion Dry Goods, supra*, should be interpreted to include enforcement of an arbitration award of a quasi-legislative nature issued under the authority of a valid strike settlement agreement. In construing Section 301 as not providing for the enforcement of arbitration awards of a quasi legislative nature, the Supreme Court of the Commonwealth of Puerto Rico decided contrary to and in direct conflict with the holding of this Honorable Court in the *Lions* case.

As a federal district Court put it referring to *Boston Printing, supra*, upon the authority of which the court below decided the instant case, "This case * * * is at odds with the rulings of the Supreme Court * * * *Division 892* v. *M. K. and O. Transit Lines*, 210 F. Supp. 351 (1962). If this case the district court of Oklahoma enforced an agreement to arbitrate the terms and conditions of employment under the provisions of Section 301.

The Supreme Court of Puerto Rico, expressly holds that as a matter of federal substantive law, arbitration awards of a quasi-legislative nature are not enforceable under Section 301 of the L. M. R. A., nor under Section 9(2)(c) of the Labor Relations Law of Puerto Rico. At the same time it expresses that it is not deciding whether the result would be the same if a local enterprise had been involved in this case. This assertion openly implies that the Court below mistakenly assumes preemption of the field of enforcement of arbitration awards in cases involving enterprises in commerce. This mistaken assumption of the court below poses the issue as to whether local law may superseded Section 301 in the field of enforcement of arbitration awards.[6]

In *Textile Workers* v. *Lincoln Mills*, 35 U. S. 448 (1957) where federal courts are required to fashion from the policy of the federal labor law a body of federal law for the enforcement of agreements within its ambit, it was recognized that "state law if compatible with the purpose of Section 301 may be resorted to in order to find the rule that will best effectuate the federal policy."

This principle is apparently followed by the court below in this case and as aforementioned at the same time expresses that the decision would not cover a similar situation in cases of local enterprises.

---

[6] This issue is implied in the decision in an extremely ambiguous manner inasmuch as the court below expresses on the one hand that Section 9(2)(c) of the local act is not a labor arbitration law; and on the other hand implies that the result might have been different if this enterprise had been local in nature. However, in the light of the important issues raised by this decision it is worthwhile to mention this aspect.

Within the framework of the federal substantive law to be created in this field, there is no doubt that more embracing local enactments to enforce contractual obligations and arbitration awards are not excluded, and may be used by the judiciary, as a matter of federal law, to solve the fundamental problems and to avoid the harmful consequences of non-compliance by the parties of their contractual obligations in arbitration awards in general, and as it refers to the instant case, in an award of a quasi-legislative nature. *Charles Dowd Box Co.* v. *Courtney*, 368 U. S. 502 (1962).

The all embracing federal policy enunciated by this Supreme Court in the interpretation of Section 301 cases decided since 1957 and specifically in the light of the *Lion Dry Goods* case, requires that Section 301 be construed to apply in cases of enforcement of arbitration awards of a quasi-legislative nature, issued, as in this case, under a voluntary submission contained in a valid settlement agreement.

For all the above reasons, it is respectfully submitted that the Honorable Supreme Court of Puerto Rico was in error in denying enforcement of the arbitration award involved in this case under the authority of Section 301 of the Labor Management Relations Act as interpreted by this Court.

CONCLUSION

In view of the above, petitioner herein, as exclusive representative, duly certified at the time of the strike settlement agreement of March 17, 1961, and at the time of the issuance of the arbitration award, August 10, 1961, and also as party directly affected by the terms and provisions of said arbitration award, respectfully prays that this petition for a writ of certiorari should be granted.

Respectfully submitted,

RICHARD P. LONG,
64 Wall Street,
New York, New York,

SARAH TORRES PERALTA,
GINORIS VIZCARRA,
720 First Federal Building,
Santurce, Puerto Rico,

Counsels for Petitioner.

LIBRARY
SUPREME COURT, U. S.

Office Supreme Court, U.S.
FILED
FEB 18 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM

No. 842.

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC, GULF, LAKES & INLAND WATER DISTRICT, PUERTO RICO DIVISION, AFL-CIO,

Petitioner,

vs.

VALENCIA BAXT EXPRESS, INC., MARITIME TRUCKING COMPANY, INC., and LABOR RELATIONS BOARD OF PUERTO RICO,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

APPENDIX A

RICHARD P. LONG,
64 Wall Street,
New York, New York,

SARAH TORRES PERALTA,
GINORIS VIZCARRA,
720 First Federal Building,
Santurce, Puerto Rico,

Counsels for Petitioner.

INDEX

	PAGE
1. Opinion and judgment rendered by the Supreme Court of the Commonwealth of Puerto Rico on October 25, 1962	1a-15a
Judgment—October 25, 1962	16a
Order—November 20, 1962	17a
2. Statutes	18a-19a

APPENDIX A

1. Opinion and Judgment

IN THE

SUPREME COURT OF PUERTO RICO

JRT-62-2

Re: Enforcement of Arbitration Award

(29 L. P. R. A. § 61 *et seq.*)

LABOR RELATIONS BOARD OF PUERTO RICO

(In the name of and in representation of the Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO, Puerto Rico Division),

Petitioner,

vs.

VALENCIA BAXT EXPRESS, INC. and MARITIME TRUCKING, INC.,

Respondents.

Division composed of Mr. Justice Hernández Matos as Chief Judge of Division and Mr. Justice Santana Becerra and Mr. Justice Blanco Lugo.

Opinion delivered by Mr. Justice Santana Becerra.

San Juan, Puerto Rico, October 25, 1962.*

* This is the English translation of the opinion and judgment rendered by the Supreme Court of the Commonwealth of Puerto Rico in the Spanish language.

1. Opinion and Judgment

The Puerto Rico Labor Relations Board represented by the Attorney General appeared before this Court in the name and on behalf of the Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO (Puerto Rico Division), in this case the Union, requesting us to order Valencia Baxt Express, Inc. and Maritime Trucking, Inc., in this case the Employers, to comply with an arbitration award. Puerto Rico Labor Relations Act, No. 6 of March 7, 1946, Sec. 9(2)(c), 29 LPRA § 70 (2)(c).

The Board alleges that on March 17, 1961, the parties signed certain stipulation in which they bound themselves to negotiate to commence Friday, March 24, 1961. If no agreement could be reached within 15 days after commencement of negotiations, then the entire matter would be submitted to arbitration for settlement. The Secretary of Labor of the Commonwealth of Puerto Rico, would designate an arbitrator. The decision of the arbitrator would be made within 30 days of such submission and would be final and binding on both parties.

On April 19, 1961 the Secretary of Labor wrote a letter to Mr. Eduardo Gracia informing him that the strike between the Union and the Employers had been settled by a stipulation of March 17, 1961, signed by the representatives of the aforesaid parties; that on April 12, 1961 the President of the Union had informed him of the inability of the parties to reach an agreement and requested the designation of the arbitrator and that pursuant to said stipulation he designated him as such arbitrator and included a copy thereof for whatever action he deemed pertinent. After the proper procedure, on August 10, 1961, the arbitrator issued the arbitration award. Because of the nature of the issues raised by the Employers in this case, we copy below those parts of the

award in which the arbitrator interprets the submission and his power to decide:

"FINDINGS ON THE QUESTIONS TO BE DECIDED

"Paragraphs 3, 4, and 5 of the submission agreement signed by the parties on March 17, 1961 (Exhibit I) set forth the questions and general procedure to be followed in the arbitration. Insofar as pertinent, said paragraphs read:

"3. Negotiations to commence Friday, March 24th, 1961. If agreement can not be reached within 15 days after commencement of negotiations, then the entire matter shall be submitted to arbitration for settlement. The Secretary of Labor of the Commonwealth of Puerto Rico shall designate such arbitrator.

"4. The decision of such arbitrator shall be made within 30 days of such submission.

"5. The decision shall be final and binding on both parties.

"The stipulation to arbitrate is exceedingly general with respect to the issues involved in this arbitration. The stipulation merely indicates: '. . . *then the entire matter shall be submitted to arbitration for settlement* . . .' [Emphasis supplied by arbitrator] Which is the scope of the words 'the entire matter'? Which are the matters subject to this arbitration? In order to arrive at a decision on the issues of the case, we must examine the briefs of the parties and the statements of the parties regarding this same matter. *Exhibits 6, 7, 8, 14, 15; Stenographic Record of the Hearings.*

1. Opinion and Judgment

"BRIEF OF VALENCIA BAXT EXPRESS, INC.

"May 4, 1961. Exhibit 8.

"1. That the Collective Agreement signed with the Union on November 27, 1957, is still in force and does not expire until November 30, 1961.

"2. That even if the allegation of the Union that there is no agreement after December 1, 1960, were correct, the Union violated said agreement when it went on strike instead of relying on the arbitration clause of the aforesaid agreement.

"3. That the S. I. U. (the Union) ought not to appear as a party in this arbitration proceeding inasmuch as it lost the representation of the laborers of Valencia Baxt Express. This issue concerns the Labor Relations Board and, therefore, the arbitrator lacks jurisdiction in this case.

"4. Assuming that these allegations were rejected and such rejection were correct, Valencia Baxt Express is in no financial condition to absorb a salary increase and the cost of other financial covenants of the agreement. Furthermore, an increase in its costs would place it in competitive disadvantage with other trucking concerns.

"BRIEF OF MARITIME TRUCKING CO., INC.

"May 4, 1960. Exhibit 7.

"1. That the Collective Agreement signed with the Union on December 30, 1957, is still in effect and expires June 3, 1961.

"2. That this arbitration proceeding is academic since the Union's certification expires June 3, 1961; and because the Union has stated that it does not wish to represent the laborers of Maritime Trucking Company.

"3. Assuming that these allegations were rejected, and my rejection were correct, Maritime Trucking Co., Inc., is in no financial condition to absorb a salary increase and the cost of other financial covenants of the agreement. Moreover, an increase in its costs would place it at a competitive disadvantage with other trucking concerns.

"**BRIEF OF THE UNION**

"May 5, 1961. Exhibit 15.

"1. That the Union signed a Collective Agreement with Valencia Baxt Express on November 27, 1957 and with Maritime Trucking Company on January 9, 1958 and that both agreements expired on November 30, 1960.

"2. That the Union and the two Employers negotiated for a new agreement and the negotiations resulted in a strike that ended with the arbitration stipulation of March 17, 1961.

"3. That the Employers denied the Union's request to examine the books of both concerns in order to obtain pertinent information of a financial nature to submit it to the arbitrator.

" .....

"With respect to the merits of the case, the arbitrator considers that the only question submitted to him for decision is the question regarding the collective agreements among the parties and the specific questions in connection with these agreements that resulted in the submission agreement of March 17, 1961. The arbitrator deems that the issues to be decided are the following:

"1. Whether the collective Agreement signed between the Union and Valencia Baxt Express on November 27, 1957 is still in effect or expired on November 30, 1960.

1. Opinion and Judgment

"2. Whether the Collective Agreement signed between the Union and Maritime Trucking Company on December 30, 1957, is still in effect or expired on November 30, 1960.

"3. Had there been an automatic renewal of these two agreements dated November 30, 1960, the arbitration would involve the financial convenants of the former agreement.

"4. Had these two agreements expired on November 30, it is incumbent on the arbitrator to decide the new agreement binding the parties, including, among other things:

"(a) Format and language and duration of the new agreement with Valencia Baxt Express, Inc.

"(b) Format and language and duration of the new agreement with Maritime Trucking Company.

"(c) Deciding as to the proposed changes in the financial covenants and conditions of work, applicable to both agreements.

"(d) Retroactive date of the financial covenants applicable to both agreements." [1]

The arbitrator decided that the collective agreements existing between the Union and the Employers had expired November 30, 1960; that since the Union timely notified its

[1] In addition to the text copied above the arbitrator stated that during the proceedings a group of workers of these Employers informed the Department of Labor that they objected to the arbitration proceedings and challenged the representation of the Union. In subsequent hearings the Employers objected to the arbitration proceeding due to the protests and objections of a group of laborers of their enterprises against said arbitration, against the arbitrator and against the Union. They also requested the suspension of the proceedings and that the arbitrator be disqualified under the charge of bias and prejudice. Apparently a problem of representation was being raised in which part of the workmen rejected the Union, but the arbitrator did not pass on this problem on the ground that it rested with the Labor Relations Board.

desire to continue negotiations, there was no automatic renewal of said agreements on December 1, 1960; that since said agreements expired, a new agreement should be executed to govern the relations between the Union and each Employer for a two year term beginning December 1, 1960 and he interpreted the submission to the effect of having authority to draw up a new agreement.[2] Because of the importance that it has in connection with the issues raised we attach a literal transcript of that part of the award as Appendix A of this opinion.

On February 14, 1962, we granted 10 days to the Employers to show cause, if any, why the award should not be enforced.[3] On February 20, they filed a notice that they had requested a change of venue to the United States District Court for the District of Puerto Rico, which was finally denied by said Court on July 10, 1962. The Employers have appeared and request the dismissal of the appeal on the ground that it is a quasi-legislative arbitration award and since the substantive federal law should prevail, it should not be enforced by this Court.

Irrespective of the contention of the Employers, it is very questionable whether that part of the award which consists of a collective agreement to govern the relations between the

---

[2] The award orders the Union and the Employers to appear to provide for such matters as: Union recognition, Union shop, selection of new personnel, probationary period, work day and work week, holidays, arbitration, first step, second step, third step, check-off, vacations and sick leave, welfare fund, seniority, general provisions, minimum compensation, wages, strikes and walkouts, retroactivity of wages and effectiveness.

[3] The Union appeared separately represented by attorneys Misses Torres Peralta and Vizcarra who requested leave to intervene. In this suit such intervention does not lie. Sec. 9(2)(c), Act No. 6 of March 7, 1946. In the absence of any objection, Sec. 10, we granted the lady attorneys the legal representation sought together with the Attorney General.

parties should be enforced, inasmuch as the power of the arbitrator under the submission is doubtful to the effect.[4]

In *Rios* v. *Puerto Rico Cement Corp.*, 66 P. R. R. 446, we said at p. 453, that as a general rule an award may be challenged or set aside if there exists any defect or "*insufficiency*" in the *submission*. We ratified this in *Labor Relations Board* v. *N. Y. & P. R. S. S. Co.*, 69 P. R. R. 730, 742, and in addition we said at p. 748: "Precisely because an arbitrator's award is final and binding, the arbitrator can not, unless the parties so agree determine his own jurisdiction. It is for the courts and not for the arbitrator *to construe* the arbitration agreement *to determine what questions the parties agreed to submit to arbitration*. And contracts providing for arbitration will be carefully construed in order not to force a party to submit to arbitration a question which he did not intend to be submitted." (Citations.) And at p. 751: "As we have seen, because the parties are bound by an arbitrator's award and the courts may not review it on the merits, a *submission agreement* is interpreted *carefully* to prevent arbitration of issues not submitted to arbitration. Since the submission agreement does not clearly give the Committee authority to award back pay prior to January 9, 1948, the award may not be enforced insofar as it provides for back pay prior to that date." (Italics ours.)*

---

[4] Act No. 376 of May 8, 1951 authorizes and regulates the commercial arbitration and expressly provided that it does not apply to arbitration agreements between employers and employees, which would continue to be governed by the Labor Relations Act under and by virtue of any other act which might be enacted to regulate the arbitration of labor management problems. The Labor Relations Act does not regulate labor arbitration and there is no other specific legislation to that effect. However, this Court has been applying to the labor management arbitration problems the general principles in the doctrine which governs the arbitration matter. Cf. *Housing Authority* v. *Superior Court*, 82 P. R. R. 333, 344.

* One of the provisions of the award in this quasi-legislative case is the back pay of the wages.

I. Opinion and Judgment

The submission contract in this case is the stipulation of March 17, 1961. We know that there was a state of strike, but the record does not say what were the specific demands or disputes object of the stoppage. It could perhaps be based on a difference of opinion as to whether the prior agreement was or was not in effect or whether it had been renewed or not, and also there could have existed other demands or disputes. We do not know. The arbitrator himself was perplexed in the face of the vagueness and insufficiency of the submission, posing himself several questions. The entire matter is, insofar as the record before us is concerned, a state of strike. As the arbitrator himself states, he found the complement of the submission agreement in expressions of the parties during the proceedings before him. But assuming that said expressions in the course of the proceedings cured the fundamental defect of the submission, according to the way he himself states them, the interpretative conclusion which he reached to the effect that he was authorized under the submission to draw up a whole collective agreement, binding on both parties, seems groundless and of doubtful validity, particularly when, in the absence of a clear and specific authorization, free of any doubt and vagueness, it could fail to respond, as we shall later see, to a better and more desirable practice in the field of labor management relations.

The Employers maintain that the federal courts do not enforce an award of a quasi-legislative nature and that we should in this case apply the substantive federal law. There is no dispute that these Employers are subject to the federal legislation on fair standards of work, Taft Hartley. It is unquestionable that part of the award constitutes a legislative piece of the arbitrator to regulate prospectively the relations, rights and duties of the parties for a two-year term.

1. Opinion and Judgment

Let us turn to the federal situation. In *Boston Printing Pressmen's Union* v. *Potter Press*, 241 F. 2d 787, the Court of Appeals for the First Circuit refused to enforce part of a collective agreement insofar as it would lead, if enforced, to an award of this nature, although much more limited than the one in the present case. The Union and the employer had agreed in a collective agreement that if either party desired a change or alteration of any of the terms of the contract it should give notice at a certain time, otherwise the agreement would continue in effect for another year. The agreement created an arbitration committee to which all the problems would be referred as well as the interpretation of any of its clauses or any violation of the agreement which could not be settled otherwise. It was specifically agreed that all questions regarding a new agreement to become effective at the expiration of that one which could not be settled by conciliation, would be decided by arbitration.

The Union notified the employer its desire to discuss certain changes in the terms and conditions of employment. Various negotiations followed and later the Union informed that three questions relating to a renewal of the agreement had not been settled by conciliation, namely, three week's vacation with pay, two additional holidays and a sick and accident plan; and it requested the employer to submit those three matters to the arbitration committee pursuant to the collective agreement. The employer answered that the agreement did not create a valid and enforceable obligation to arbitrate the renewal terms of the agreement. The Union then appealed to the federal District Court requesting an order compelling the employer to submit those questions to arbitration. The employer moved for the dismissal of the proceedings and they were dismissed.

The Court of Appeals held that the federal court had power to take cognizance of the proceedings and order the

specific performance of a provision of a collective agreement binding the parties to submit to arbitration a dispute under its own ruling in *Local 205, United Electrical, etc.* v. *General Electric*, 233 F. 2d 85. This decision was affirmed by the United States Supreme Court subsequent to the judgment of *Boston Printing Pressmen's Union* in *General Electric Co.* v. *Local 205*, 353 U. S. 547. But notwithstanding the fact of recognizing power to the District Court to compel the enforcement of a collective agreement—Sec. 301 of the Labor Relations Act of 1947, 29 U. S. C. A. Sec. 185 (a)—the Court of Appeals noted, however, that in that case the District Court had pointed out a radical difference from the one presented in *General Electric* in the sense that now it was sought to obtain the specific performance of a collective agreement to submit to arbitration a new contract to govern the working conditions after the expiration of the agreement in effect, that is, quoting the District Court, that "The Court is asked to direct what may conveniently be described as a prospective or quasi-legislative arbitration establishing future labor conditions not specifically envisaged in their earlier contract." And the Court of Appeals stated, quoting again the District Court that assuming the constitutionality of a statute in which Congress, with its eyes open might authorize the federal courts to enforce legislative awards of arbitrators, "the present United States arbitration statute . . . is concerned only with the enforcement of quasi-judicial awards directed at the ascertainment of facts in a past controversy and at the prescription of recoverable damages or other suitable awards for that which has been broke not for that which is to be built."

In the even more documented and elaborate opinion of the District Court, 141 F. Supp. 553, Judge Wyzanski indicates that the state courts have generally considered the quasi-legislative award problems to be beyond the intended

reach of a judicially enforceable arbitration statute, unless, and in any event, the Legislature spoke clearly in favor of the widest possible interpretation. Judge Wyzanski, however, did not dispose of the matter merely on the basis of the technical problem presented. Considering it as a novel question not yet decided by federal courts, and envisaging the effect it might have on the delicate area of labor relations, he further said: "Indeed this Court has no information as to whether it is common in labor contracts to have such quasi-legislative provisions; nor, if it is common, whether their enforcement by courts would be desired generally . . . So many doubts are stirred that a court would do well to move warily . . . this court deems it undesirable to jump into what may be a bottomless pit of dispute over future working conditions. In any event, if the Courts are to go into the field of quasi-legislative labor awards let the representatives of the workers, the representatives of the employers, and above all the representatives of the people make themselves first heard in the halls of Congress." Notwithstanding the public policies involved, the Supreme Court refused to review these decisions. 355 U. S. 817. Up to this moment, this is the applicable law in the federal ambit.

It is well to note that although the two decisions of *Potter Press* tie to the problem the United States Arbitration Act, 9 USC, and in part rely on said statute, upon affirming the decision of *Local 205* under the authority of the case of *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U. S. 448, the Supreme Court did not follow the opinion of the First Circuit to the effect that the Arbitration Act provided the cause of action to compel to arbitrate, but that said cause of action arose from Section 301 (a) of the Taft-Hartley Act. In effect, after the decision of *Lincoln*

Mills, the United States Arbitration Act ceased to have importance in the problem involved.[5]

When in *Lincoln Mills* the Supreme Court finally decided the differences of opinion as to whether section 301 (a) of the Taft Hartley Act merely granted jurisdiction to federal courts in disputes which involved labor organizations or whether, on the contrary, said section was a source of substantive law, the Supreme Court holding that it was such a source and that under its authority the federal courts could order the specific performance of a collective agreement which bound the parties to submit to arbitration and passing on the question of which substantive law should be applied, the Supreme Court held that it was the federal substantive law which the courts could fashion from the policy of our national labor laws. Also that the interpretation of the federal law by federal courts would prevail, not the local law. However, local law could be applied if compatible with the purposes of section 301, in order to find a remedy that will best effectuate the federal policy. Whatever state law might be applied, nevertheless, it would be absorbed as a federal law and would not constitute an independent source of private law.

The Union maintains, invoking *Dowd Box Co.* v. *Courtney*, 368 U. S. 502 and *Teamsters Local* v. *Lucas Flour Co.*,

---

[5] In a proceeding filed by the Employer on September 1961 in the U. S. District Court to set aside this quasi-legislative arbitral award, to which the Union objected, Hon. Clemente Ruiz Nazario stated that had the Union requested in that Court the enforcement of said award against the Employer, the Court would have felt compelled to dismiss the case for lack of jurisdiction either under Section 301 of the Labor Management Relations Act or under the United States Arbitration Act, by virtue of the ruling of the First Circuit in *Potter Press;* and that the lack of jurisdiction of the Court under the aforesaid case to enforce said quasi-legislative award at the request of the Union, prevented it from vacating it at the request of the Employers, 199 F. Supp. 103. By the same token the United States District Court refused subsequently the change of venue of the case in which it is sought to enforce the award. Cf. *District 50, United Mine Workers* v. *Revere Copper and Brass, Inc.*, 204 F. Supp. 349, 352.

369 U. S. 95, that we have jurisdiction to take cognizance of this case. There is not the slightest doubt that we have jurisdiction to decide this case. *Dowd* is a modality of *Lincoln Mills*. It fundamentally decides that section 301(a) of the Labor Management Relations Act of 1947 does not grant federal courts exclusive jurisdiction to decide violations of contracts between employers and employees. That decision does not grant us any additonal authority that we aready did not have as we analyzed the situation in the case of *N. Y. & P. R. S. S. Co.*, and it constitutes a full ratification of what we said there.[6]

On the other hand, we do not quite confront the situation of the case of *Lucas Flour Co.*, (at pp. 102-104) nor *Atkinson* v. *Sinclair Refining Co.*, 370 U. S. 238, inasmuch as here there is no open conflict of the local law and the federal law to be decided. We have no local provision which expressly orders —or prohibits that awards of this nature be enforced by this Court.

In the absence of a statute in our legislation that expressly compels us to enforce a quasi-legislative arbitral award, if we must choose between two policies, in the case of Employers covered by federal legislation, it is logical and convenient, for the sake of the desirable uniformity in the standards that must govern labor-management problems of entities covered by said legislation, that we choose to apply the substantive federal law on the matter, which has rejected judicial action to enforce an arbitration collective agreement insofar as it would lead to a prospective award of a quasi-legislative nature or to enforce said award if it had been rendered. Cf. *Robert Lawrence Co.* v. *Devonshire Fab-*

---

[6] Although under sec. 8 of the Labor Relations Act to violate the terms of a collective agreement including a clause to accept an arbitral award, whether or not said award is included in the terms of the collective agreement, constitutes an unfair labor practice, which is not such under federal legislation, the Board here did not treat the matter as an unfair practice but instead it directly invoked the judicial power to impose the award.

rics, Inc., 271 F. 2d 402, (CA 2) *cert.* granted: 362 U. S. 909, dismissed: 364 U. S. 801; *Metro Industrial Painting Corp. v. Terminal Construction Co.* (CA 2) 287 F. 2d 382, 385; *El-Hoss Engineer & Transport Co. v. American Ind. Oil Co.* (CA 2) 289 F. 2d 346, footnote 1.

There are serious considerations of public policy in this field of labor relations which would make us think over carefully the convenience of judicially enforcing an award of this nature. One of the questions to be answered is whether such a procedure would not be an indirect attempt of the Judicial Power to legislate instead of to decide judicial or quasi judicial controversies. On the other hand, in view of the nature of the collective agreement other inconveniences have been pointed out.[7] We are not deciding now that we shall not enforce an award of this nature in a situation covered solely by our labor local laws. We repeat that there is involved a serious question of public policy and it would be preferable for the Legislature, rather than the Court, to make the decision of what may be deemed most advisable.

Pursuant to all the preceding considerations the award will be enforced as to that part which declared (1) that the collective agreement between the Union and the Employers expired November 30, 1960; (2) That the Union timely notified the Employers of their desire to enter into negotiations and that this notice precluded the automatic renewal on December 1, 1960 of the existing agreements. Applying to these Employers the federal law, coupled with the serious doubts stirred as to whether the submission clause authorized or not the arbitrator to draw up himself, binding on both parties, all the clauses of a new collective agreement, the Court will not enforce that part of the award that consists in said new collective agreement. (Appendix A).

CARLOS SANTANA BECERRA,
Associate Justice.

---

[7] See this problem briefly and summarily stated in Federal Enforcement of Agreements to Arbitrate New Contract Terms, Quasi-Legislative v. Quasi-Judicial Arbitration, Northwestern University L. Rev., Vol. 52, pp. 284-294.

Judgment*

[SAME TITLE]

Division composed of Mr. Justice Hernández Matos, as Chief Judge of Division, Mr. Justice Santana Becerra and Mr. Justice Blanco Lugo.

San Juan, Puerto Rico, October 25, 1962.

For the reasons stated in the foregoing opinion, judgment is hereby entered enforcing that part of the arbitration award of August 10, 1961 involved in the above captioned case, which declared (a) that the collective agreement between the Union and the Employers expired November 30, 1960; (2) That the Union timely notified the Employers of their desire to enter into negotiations and that this notice precluded the automatic renewal on December 1, 1960 of the existing agreements. The Court does not enforce that part of the award that consists in a new collective bargaining agreement. (Appendix A).[1]

It was thus decreed and ordered by the Court as witnesse the signature of the Acting Chief Justice.

PEDRO PEREZ PIMENTEL
Acting Chief Justice.

I attest:

IGNACIO RIVERA,
Secretary.

---

* See *supra*, footnote (1).

[1] Appendix A referred to in the opinion is not reproduced here as part of it since it is the Exhibit E which is reproduced at pages 9-34 of the Appendix B, and which was made part of the Petition filed by the Puerto Rico Labor Relations Board on January 31, 1962.

Order

[SAME TITLE]

Section composed by the Associate Justice Mr. Hernández Matos as Accidental Chairman of said Section and the Associate Justices Messrs. Santana Becerra and Blanco Lugo.

San Juan, Puerto Rico, November 20, 1962.

The motion for reconsideration and for clarification of judgment filed on November 6 of this year, denied.

Agreed by the Court as witnesses, the signature of the Chief Justice.

LUIS NEGRÓN FERNÁNDEZ
Chief Justice

I attest:

IGNACIO RIVERA
Secretary

2. Statutes

28 U. S. C. Section 1258:

Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court as follows:

1. By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

2. By appeal, where is drawn in question the validity of a statute of the Commonwealth of Puerto Rico in the ground of its being repugnant to the constitution, treaties, or laws of the United States and the decision in favor of its validity.

3. By writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is especially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States.

29 U. S. C. Section 185:

"Suits in violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties without respect to the amount in controversy or without regard to the citizenship of the parties . . ."

2. Statutes

29 L. P. R. A. Section 70(2)(e):

"In order to promote collective bargaining the Board may in the exercise of its discretion aid in the enforcement of arbitration awards issued by competent arbitration agencies, whether designated according to the terms of any collective bargaining contract executed between an Employer and a labor organization or by virtue of any agreement signed by a labor organization and an Employer. Upon the issuance of an arbitration award, the Board may give advice, at the request of any party to such award or may, if requested to do so, file in the name of the party so requesting, the proper judicial proceeding in the Supreme Court of Puerto Rico to enforce such award or arbitration."

Office-Supreme Court, U.S.
FILED
JUL 15 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1962

No. 843

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC, GULF, LAKES & INLAND WATER DISTRICT, PUERTO RICO DIVISION, AFL-CIO,

Petitioner,

vs.

VALENCIA BAXT EXPRESS, INC., MARITIME TRUCKING COMPANY, INC., and LABOR RELATIONS BOARD OF PUERTO RICO,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

BRIEF FOR RESPONDENT VALENCIA BAXT EXPRESS, INC., IN OPPOSITION

HERBERT BURSTEIN,
Counsel for Respondent,
160 Broadway,
New York 38, New York.

LODGE APPEAL PRESS, INC., 41 VESEY STREET, NEW YORK, N. Y. WOrth-2-0689

INDEX

	PAGE
Opinion	3
Jurisdiction	3
Question Presented	4
Statutes Involved	4
Statement	4
Argument	6
I. The decision below did not exclusively involve the question of enforceability of a quasi-legislative award and is clearly correct	7
II. There is no conflict of decisions and no important federal questions of substance to be decided	10
Conclusion	11

CASES CITED

Boston Printing Pressmen v. Potter Press, Inc., 141 F. Supp. 553 (1956), aff'd 241 F. 2d 787 (1957), cert. denied 355 U. S. 817 (1957)	7
Boston Printing Pressmen's Union v. Potter Press, 241 F. 2d 787 (1957), cert. denied 355 U. S. 817 (1957)	5, 10

PAGE

Central U. Telegraph Co. v. Edwardsville, 269 U. S. 190 (1925) 3

Conch v. Prescolite Manufacturing Corporation, 191 F. Supp. 737 (W. D. Ark., 1961) 11

Division No. 8[illegible] Amalgamated Association of Sheet, Electric Railway & Motor Coach Employees of America v. M. K. & O. Transit Lines, Inc., 210 F. Supp. 351 (N. D. Okla. 1962) 10

Dowd Box Co. v. Courtney, 368 U. S. 502 (1962) 8

General Electric Company v. Local 205, United Electrical, Radio & Machine Workers of America, 353 U. S. 547 (1957) 10

Local 174, Teamsters v. Lucas Flour Co., 369 U. S. 95 (1962) 8

Maryland v. Baltimore Radio Show, Inc., 338 U. S. 912 (1950) 10

Parker v. Illinois, 333 U. S. 571 (1948) 3

Retail Clerks Local 128 v. Lion Dry Goods, Inc., 369 U. S. 17 (1962) 7, 9

Textile Workers Union of America v. Lincoln Mills of Alabama, 353 U. S. 448 (1957) 9, 10

United Steelworkers of America v. American Manufacturing Company, 363 U. S. 564 (1960) 8, 9

United Steelworkers of America v. Enterprise Wheel and Car Corporation, 363 U. S. 593 (1960) 8, 9

United Steelworkers of America v. Warrior & Gulf Navigation Company, 363 U. S. 574 (1960) 7, 8, 9

STATUTES CITED

	PAGE
Labor Management Relations Act, 1947 as amended (U. S. C. Title 29, Section 185) Section 301	3, 4, 8, 9, 10
Puerto Rico Labor Relations Act No. 6 of March 7, 1962, Section 9(2)(e), 29 LPRA, Section 70(2)(e)	3, 4
Supreme Court Rules:	
Rule 19	10
Rule 22	2
Rule 34	2
U. S. C. Title 28:	
Section 2101(e)	2
Section 1258	3
Section 1257	3
Section 1258(3)	3

AUTHORITIES CITED

Cox, "Current Problems in the Law of Grievance Arbitration", 30 Rocky Mt. L. Rev. 247 (1958)	9
Hays, The Supreme Court and Labor Law, October Term, 1959, 60 Colum. L. Rev. 901 (1960)	9

PAGE

Note, The Discretionary Power of the Supreme Court to Dismiss Appeals from State Courts, 63 Colum. L. Rev. 688, 695 (1963) 2

Shulman, "Reason, Contract and Law in Labor Relations", 68 Harv. L. Rev. 999 (1955) 9

Stern & Gressman, Supreme Court Practice, (3d ed. 1962):

205-07 2

234-235 3

158 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 842

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC, GULF, LAKES & INLAND WATER DISTRICT, PUERTO RICO DIVISION, AFL-CIO,

Petitioner,

vs.

VALENCIA BAXT EXPRESS, INC., MARITIME TRUCKING COMPANY, INC.; and LABOR RELATIONS BOARD OF PUERTO RICO,

Respondents.

Opposition to Granting Petition for Writ of Certiorari for Lack of Jurisdiction and Brief for Respondent Valencia Baxt Express, Inc. in Opposition

Respondent, Valencia Baxt Express, Inc., represents to the Court as follows:

1. The original action was instituted by the Labor Relations Board of Puerto Rico (herein called the Board)[1] against respondent and Maritime Trucking Company,

[1] The Board is now identified as a "respondent" but petitioner who was not granted leave to intervene in the Supreme Court of Puerto Rico, does not explain how this result is achieved either under any statute governing review by this Court or the Rules of this Court

Inc.[2] in the Supreme Court of the Commonwealth of Puerto Rico. The opinion was rendered and the judgment sought to be reviewed was entered on October 25, 1962 (App. A of Petition, p. 1a, 16a). A motion made by the petitioner herein (but not the Board) to reconsider and clarify the judgment was denied on November 20, 1962. (App. A of Petition, p. 17a).[3] Accordingly, the time to petition for certiorari (U. S. C. Title 28, Section 2101(c) and Rule 22) expired on January 23, 1963 and was not extended by the so-called motion for reconsideration and clarification (Stern & Gressman, *Supreme Court Practice*, 205-07 (3d. ed. 1962) nor was the period to apply for a writ extended by a Justice of this Court. Hence, even if petitioner has standing to petition for review by this Court, the time for filing the petition expired ninety days after October 25, 1962 or on January 23, 1963 (Rule 34) and filing of the petition on February 19, 1963 was untimely.

2. Equally fatal to this proceeding is the fact that petitioner has no standing to appeal. [Note, *The Discretionary Power of the Supreme Court to Dismiss Appeals from State Courts*, 63 Colum. L. Rev. 688, 695 (1963)] Petitioner's statement of its standing is less than candid, complete or illuminating. Thus, petitioner represents to the Court that the Board "expressed no objection" to its intervention in the suit before the Supreme Court of

[2] This brief is submitted exclusively for Valencia Baxt Express, Inc. No representations are made on behalf of respondent Maritime Trucking Company, Inc.

[3] No opinion was rendered and since the petitioner herein was not an intervenor in the court below, there is no reason to speculate that the motion was considered on the merits.

[4] Petitioner incorrectly states that a "timely petition for rehearing was filed on November 6, 1962" (Petition, p. 2).

Puerto Rico (Petition, p. 5), but it sedulously omits to point out the relevant fact that intervention was not allowed by the Supreme Court of Puerto Rico (App. A to Petition, p. 7a, fn. 3). Since petitioner could not intervene[3] and, at best, had the status of *amicus curiae*, it may not seek review by certiorari (Stern & Gressman, op. cit., at 234-235). Indeed, under U. S. C. Title 28, U. S. C. 1258 "local law determinations by the Supreme Court of Puerto Rico are final and not subject to review by the Supreme Court of the United States" (Stern & Gressman, op. cit., at 158).

Opinion

The opinion of the Supreme Court of Puerto Rico (App. A of Petition, pp. 1a-15a) is not officially reported.

Jurisdiction

The jurisdictional prerequisites for review have not been satisfied for the reasons previously set forth. However, if the foregoing grounds of opposition are rejected, then the jurisdiction of this Court is properly invoked under U. S. C. Title 28, Sections 1257 and 1258(3) and Section 301 of the Labor Management Relations Act, 1947 as amended (U. S. C. Title 29, Section 185).

---

[3] The decision by the Supreme Court of Puerto Rico, construing the Commonwealth law (Puerto Rico Labor Relations Act, No. 6 of March 7, 1962, Section 9(2)(c), 29 LPRA, Section 70 (2)(c) (App. A to Petition, p. 19a)), is determinative as to petitioner's status [*Parker v. Illinois*, 333 U. S. 571, (1948); *Central U. Telegraph Co. v. Edwardsville*, 269 U. S. 190 (1925)].

Question Presented

Assuming *arguendo*, the standing of the petitioner to file the petition, the questions presented are these:

(a) Was that part of the arbitration award which prescribed a collective labor agreement within the scope of the submission to the arbitrator and did the Supreme Court of Puerto Rico have the jurisdiction to decide that question and is that determination binding?

(b) If the Supreme Court of Puerto Rico was not empowered to decide whether the award of a collective labor agreement was contemplated by the submission to the arbitrator, did the Court properly hold that it constituted an unenforceable quasi-legislative award?

Statutes Involved

The statute actually involved is the Puerto Rico Labor Relations Act, No. 6 of March 7, 1946, Section 9(2)(c), 29 L. P. R. A. Sec. 702(2)(c) and Section 301 of the Labor Management Relations Act of 1947, as amended (29 U. S. C. Section 185).

Statement

On November 27, 1957, respondent Valencia Baxt Express, Inc., a corporation of Puerto Rico, entered into a labor agreement with the petitioner which was to terminate on November 30, 1960 (unless extended by failure to give timely notice of cancellation). Between November 30, 1960 and February 22, 1961, respondent, bargained with petitioner although respondent claimed that notice of termination had not been given and the agreement had been automatically extended (App. B. of Petition, p. 28).

On February 22, 1961, the petitioner enforced a strike against respondent which continued until March 17, 1961 when the Secretary of Labor of the Commonwealth of Puerto Rico intervened and drafted a settlement agreement between petitioner and respondent and Maritime Trucking Company, Inc. (App. B of Petition, p. 5). The petitioner and the respondent failed to reach an agreement, whereupon the Secretary of Labor, on April 19, 1961, designated Eduardo Gracia as the arbitrator (App. B of Petition, p. 6).

Prior to the commencement of formal hearings before the arbitrator, respondent alleged that it would not participate in the arbitration (App. B of Petition, p. 25). Furthermore, as early as April 28, 1961, respondent and the employees of the respondent advised the arbitrator that petitioner no longer represented the workers and that the latter were opposed to any arbitration proceedings before him (App. B of Petition, pp. 25, 32). On August 10, 1961, the arbitrator rendered his award (App. B of Petition, pp. 25-34). Annexed to the award was a complete and extensive collective bargaining agreement which the arbitrator presumed to prescribe for and impose upon the parties (App. B of Petition, pp. 9-24).

The provisions of the settlement agreement upon which the arbitrator mistakenly relied in prescribing a collective bargaining agreement was Paragraph "3" (App. B of Petition, p. 5). However, the arbitrator expressed doubt about his powers. Nevertheless, he proceeded to write out a complete labor agreement.

After the award was rendered, respondent instituted an action in United States District Court for the District of Puerto Rico to vacate the award. The District Court dismissed the petition in reliance upon the decision in *Boston Printing Pressmen's Union* v. *Potter Press* (241 F. 2d

787 (1957), cert. denied 355 U. S. 817 (1957)) (Petition, p. 4). Thereafter, respondent appealed to the Court of Appeals for the First Circuit. In the meantime, and while the appeal to the Court of Appeals for the First Circuit was pending, the Puerto Rico Labor Relations Board instituted suit in the Supreme Court of the Commonwealth of Puerto Rico to enforce the award (App. B to Petition, pp. 1-4). After a petition for removal of this suit to the United States District Court for the District of Puerto Rico was denied (Petition, p. 4) the Supreme Court of Puerto Rico rendered a judgment in which it refused to enforce that part of the award which prescribed a collective bargaining agreement (App. A of Petition, p. 16a). A subsequent motion for reconsideration made by petitioner and not the Board was denied without opinion (App. A to Petition, p. 17a).

Argument

Apart from the fact that petitioner has no standing to seek review, the issues presented are spurious because they disregard the true nature of the decision by the Supreme Court of Puerto Rico. In any event, the issues, as presented by petitioner, have been before this Court and, hence, there are no federal questions of substance involved, there are no conflicts of decisions to be resolved and the decision of the Supreme Court of Puerto Rico is obviously correct.

I

The decision below did not exclusively involve the question of enforceability of a quasi-legislative award and is clearly correct.

The burden of the petitioner's claim is that a quasi-legislative award must be enforced and that the contrary holding in *Boston Printing Pressmen v. Potter Press, Inc.*, [141 F. Supp. 553 (1956), aff'd 241 F. 2d 787 (1957), cert. denied 355 U. S. 817 (1957)] was modified by *Retail Clerks Local 128 v. Lion Dry Goods, Inc.* [369 U. S. 17 (1962)] (Petition, p. 7). Hence, petitioner contends that quasi-legislative awards are now enforceable by reason of the *Lion* decision (Petition, pp. 8-9).

The difficulties with this argument are both lack of merit and the erroneous assumptions upon which it is based. In essence, the Supreme Court of Puerto Rico decided that the arbitrator exceeded the scope of the submission (Appendix A to Petition, p. 8a) and that the arbitrator was not authorized to "draw up a whole collective agreement" (Appendix A to Petition, pp. 8a-9a). The arbitrator's assumption of authority is described by the Supreme Court as "groundless" (App. A of Petition, p. 9a).

The inquiry by the Supreme Court of Puerto Rico is consistent with the lesson of *United Steelworkers of America v. Warrior & Gulf Navigation Company*, 363 U. S. 574 (1960) in which this Court held:

> "It is clear that under both the agreement in this case and that involved in *American Manufacturing Co.* * * * the question of arbitrability is for the courts to decide" (363 U. S. at 583 n. 7).

Unlike the situation in the triology [*United Steelworkers of America* v. *Enterprise Wheel and Car Corporation*, 363 U. S. 593 (1960); *United Steelworkers of America* v. *Warrier and Gulf Navigation Company*, 363 U. S. 574 (1960); *United Steelworkers of America* v. *American Manufacturing Company*, 363 U. S. 564 (1960)] the dispute did not arise under an existing collective bargaining agreement. Indeed, even where a collective bargaining agreement is the source of the demand for arbitration or the award, a court may properly inquire "whether the reluctant party did agree to arbitrate the grievance or did agree to give the arbitrator power to make the award he made" (*United Steelworkers of America* v. *Warrior & Gulf Navigation Company*, *supra*, at p. 582). It was, therefore, entirely appropriate for the Supreme Court of Puerto Rico to determine that the arbitrator had no authority under the submission to prescribe and impose a collective bargaining agreement. This conclusion follows this Court's instruction that an "award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award." (*United Steelworkers of America* v. *Enterprise Wheel and Car Corporation*, *supra*, at p. 597).

The Supreme Court of Puerto Rico was empowered to test the award against the submission and properly refused enforcement because the award exceeded the scope of the submission. In *Local 174, Teamsters* v. *Lucas Flour Co.* [369 U. S. 95 1962] and in *Dowd Box Co.* v. *Courtney*, [368 U. S. 502 (1962)], this Court held that state courts may exercise concurrent jurisdiction with federal courts in suits brought under Section 301.

Contrary to the petitioner's contention, the decision in the *Lion* case did not change the direction originally marked out by *Textile Workers Union of America* v. *Lincoln Mills of Alabama* [353 U. S. 448 (1957)] and later channelized by the triology of *United Steelworkers* cases. In the *Lion* case, *supra*, this Court held that a strike settlement agreement is a contract within the meaning of Section 301 of the Federal Labor Act but declined to pass upon the claim that it constituted a collective bargaining agreement [369 U. S. 17 at 28]. But *Lion* did not involve a quasi-legislative award nor a determination that the grievance involved was not covered by the strike settlement agreement. Indeed, the employers in *Lion*, unlike respondent, participated in the arbitration proceedings [369 U. S. 17 at 23] but denied that the award could be enforced in a Section 301(a) suit. All that this Court held was that a suit for violation of a contract, including a strike settlement agreement, may be maintained under Section 301. [Cox, "*Current Problems in the Law of Grievance Arbitration*", 30 Rocky Mt. L. Rev. 247 (1958); Hays, *The Supreme Court and Labor Law*, October Term, 1959, 60 Colum. L. Rev. 901 (1960); Shulman, "*Reason, Contract and Law in Labor Relations*", 68 Harv. L. Rev. 999 (1955).]

Plainly, then, as a matter of state and federal law, a court may determine whether a given dispute is subject to arbitration and, initially, whether an award is within the scope of the arbitration clause or submission.

II

There is no conflict of decisions and no important federal questions of substance to be decided.

In *Boston Printing Pressmen's Union* v. *Potter Press*, [241 F. 2d 787 (1957)] the Court of Appeals for the First Circuit expressly held that a quasi-legislative award could not be enforced in a suit under Section 301. When this Court denied the petition for a writ of certiorari in this case (355 U. S. 817) on October 14, 1957, *Lincoln Mills, supra*, and *General Electric Company* v. *Local 205, United Electrical, Radio & Machine Workers of America* [353 U. S. 547 (1957)] had been decided. While a denial of a writ of certiorari is not an evaluation of merits [*Maryland* v. *Baltimore Radio Show, Inc.*, 338 U. S. 912, 919 (1950)], it indicates that the Court did not think the issue presented there and the very one involved here, merited the exercise of jurisdiction (Rule 19). Petitioner's reliance upon the decision in *Division No. 892, Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America* v. *M. K. & O Transit Lines, Inc.*, 210 F. Supp. 351 (N. D. Okla. 1962) is misplaced. To begin with, that decision presupposes that the *Boston Printing Pressmen's Union* case, *supra*, is "at odds with rulings of the Supreme Court" (p. 356) but the facts are plainly distinguishable because the contract clause contemplated "changes, additions and modifications" (p. 353) of an existing collective bargaining agreement and the District Court properly held that the "right to arbitration does not expire with the expiration of the labor contract" (p. 356). Indeed, the District Court properly held that the *Boston Printing Pressmen's* case was "not in point" (p. 356) and its comment as to the validity of the

opinion is pure *dicta*. Now, in point (and apparently overlooked by petitioner in its research) is the decision in *Couch v. Prescolite Manufacturing Corporation* [191 F. Supp. 737 (W. D. Ark. 1961)]. There is, therefore, no conflict of decisions nor any federal questions of substance to be resolved.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

HERBERT BURSTEIN,
Counsel for Respondent.

Dated: May 14, 1963.